



SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA-2019-0011]

Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notification of waiver of the Nonmanufacturer Rule for commercially available off-the-shelf laptop and tablet computers.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule (NMR) for commercially available off-the-shelf laptop and tablet computers under North American Industry Classification System (NAICS) code 334111 and Product Service Code (PSC) 7435. This U.S. industry comprises establishments primarily engaged in manufacturing laptop and tablet computers.

DATES: This action is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Carol J. Hulme, Attorney Advisor, by telephone at (202) 205-6347 or by email at carol-ann.hulme@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations require that recipients of Federal supply contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business (SDVO SB) set-aside or sole source contract, Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract, WOSB (women-owned small business) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order

against a multiple award contract provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold. Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market.

The SBA defines “class of products” based on a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products. As implemented in SBA’s regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

On July 26, 2019, SBA received a request to waive the NMR for commercially available off-the-shelf laptops and tablet computers under NAICS code 334111 and PSC 7435. According to that request, submitted with supporting information, there are no small business manufacturers of these items in the Federal market.

On December 17, 2019 (84 FR 69010), the SBA issued a Notice of Intent to grant a class waiver for commercially available off-the-shelf laptops and tablet computers. SBA received 41 comments in response to the Notice. All comments supported the issuance of the class waiver as there are no small business manufacturers in the Federal market for commercially available off-the-shelf laptops and tablet computers.

As expressed in the Notice of Intent, SBA limits this class waiver to laptops and tablet computers procured by the government that meet the Federal Acquisition Regulation (FAR) definition of “commercially available off-the-shelf (COTS)” items. In FAR section 2.101, the FAR defines the term “commercially available off-the-shelf (COTS) item” as follows: “(1) Means any item or supply (including construction material) that is—(i) A commercial item (as defined in paragraph (1) of the definition in this section); (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.”

SBA received 41 comments in response to the Notice of Intent. All comments were in support of the waiver. Although none of the comments mentioned specialty laptops and tablet computers that are modified to meet demands of the Federal Government, those items are not included in the waiver. The exclusion of specialty laptops and tablet computers modified to meet Federal Government was included in the Notice of Intent.

Therefore, in the absence of a small business manufacturer of commercially available off-the-shelf laptops and tablet computers, this class waiver is necessary to allow otherwise qualified regular dealers to supply the product of any manufacturer on a Federal contract or order set aside for small business, SDVOSB, WOSB, EDWOSB, HUBZone or participants in the SBA’s 8(a) Business Development Program. SBA’s waiver of the nonmanufacturer rule has no effect on the requirements in 13 CFR

121.406(b)(1)(i) to (iii) and on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act or the Trade Agreements Act.

More information on the NMR and Class Waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

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Director, Office of Government Contracting.

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